

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

**STATE OF TEXAS, by and through
its Attorney General, and**

**COMMONWEALTH OF PENNSYLVANIA,
by and through its Attorney
General,**

Plaintiffs,

v.

**USA WASTE SERVICES, INC. and
SANIFILL, INC.**

Defendants.

CASE NUMBER: 1:96CV02031

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On August 30, 1996, the United States filed a civil antitrust Complaint which alleges that the proposed acquisition of the voting stock of Sanifill, Inc. ("Sanifill") by USA Waste Services, Inc. ("USA Waste") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that the combination of these two

significant competitors would lessen competition substantially in the provision of small containerized waste hauling services and landfill disposal services in the Houston, Texas and Johnstown, Pennsylvania areas. As defined in the Complaint, the Houston area encompasses Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas, including the municipalities located, in whole or in part, in those counties ("Houston market"). The Johnstown area encompasses Indiana County, Pennsylvania; Somerset County, Pennsylvania; Cambria County, Pennsylvania; northeastern Westmoreland County, Pennsylvania; and Blair County, Pennsylvania, including the municipalities located, in whole or in part, in those counties ("Johnstown market"). The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing USA Waste from acquiring control of Sanifill.

When the Complaint was filed, the United States also filed a proposed settlement that would permit USA Waste to complete its acquisition of Sanifill, but require certain divestitures and contract modifications that will preserve competition in the Houston and Johnstown markets. This settlement consists of a Stipulation and Order and a proposed Final Judgment.

The proposed Final Judgment orders USA Waste to divest the Sanifill garage located at 999 Ashland, Channelview, Texas 77530; Sanifill's frontload commercial hauling business that provides

solid waste hauling services in the Houston market, **most of** the rearload residential business of Sanifill presently served by Sanifill's Channelview facility ("Houston Hauling Assets"), and USA Waste's North County Landfill located at 2015 Wyoming, League City, Texas ("Houston Landfill Site").

In addition, USA Waste is ordered to sell the right to use landfill capacity for up to 2,000,000 tons of municipal solid waste ("MSW") over a ten year period beginning on the date of divestiture (and capped at an annual total of 270,000 tons) at one or both of the following sites in the Houston market: the Hazlewood Landfill located at 4791 Tri-City Beach Road, Baytown, Texas 77520 and the Brazoria County Landfill located at 10310 FM 523, Angleton, Texas. ("Houston Airspace Assets"). USA Waste must complete the divestiture of the Houston Hauling Assets, the Houston Landfill Site, and the Houston Airspace Assets within ninety (90) days after the date on which the proposed Final Judgment was filed (i.e., August 30, 1996), in accordance with the procedures specified therein.

The Stipulation and Order and proposed Final Judgment requires USA Waste to ensure that, until the divestitures mandated by the proposed Final Judgment have been accomplished, the Houston Hauling Assets and the Houston Landfill Site will be maintained and operated as an independent, ongoing, economically viable and active competitor. USA Waste must preserve and maintain the assets to be divested as salable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of USA

Waste. USA Waste will appoint a person or persons to monitor and ensure its compliance with these requirements of the proposed Final Judgment.

Further, the proposed Final Judgment orders USA Waste to take certain actions to eliminate any anticompetitive impact from the proposed acquisition on the Johnstown market. USA Waste is ordered to offer less restrictive service contracts to their small container solid waste hauling customers in the Johnstown market. It must provide at least 30 days written notice to the U.S. Department of Justice and the Commonwealth of Pennsylvania Attorney General's Office in advance of its purchase of any significant waste hauling or waste disposal company in the Johnstown market. It shall not oppose the addition of any landfill, existing or new, to any county landfill plan in the Johnstown market. And further, USA Waste shall make available a total of 200 tons per day of MSW landfill capacity over a ten year period beginning on the date of divestiture at the following site in the Johnstown market: the Pellegrine Landfill located at SR 2019 Lucisboro Road, Homer City, Pennsylvania 15748. The Pellegrine Landfill capacity shall be made available by the defendants for use by any and all independent private MSW haulers.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to

construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II.

DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

USA Waste is the third largest solid waste hauling and disposal company in the nation, and serves municipal, commercial, industrial and residential customers in 24 states. In 1995, USA Waste had total revenues of over \$730 million.

Sanifill is one of the top ten companies in the solid waste hauling and disposal business in the United States with operations in 23 states, the District of Columbia, Puerto Rico, Mexico and Canada. In 1995, Sanifill had total revenues of about \$257 million.

On June 22, 1996, USA Waste agreed to acquire all of the voting stock of Sanifill for a purchase price of \$1.5 billion. This transaction, which would take place in the highly concentrated Houston and Johnstown small container hauling and landfill disposal industries, precipitated the government's suit.

The Transaction's Effects in the Houston and Johnstown Markets

A. The Solid Waste Hauling Industry

The Complaint alleges that small containerized hauling services and landfill disposal services constitute lines of commerce, or relevant product markets, for antitrust purposes, and that the Houston area and the Johnstown area constitute appropriate sections of the country, or relevant geographic markets. The

Complaint alleges the effect of USA Waste's acquisition may be to lessen competition substantially in the provision of small containerized hauling services in the Houston and Johnstown markets and landfill disposal services in the Houston market.

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than that generated by residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yard containers are called "small containers." Small containers are collected primarily by front-end load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rear-end load vehicles can also be used to service some small container customers, but these trucks generally are not as efficient as front-end load

vehicles and are limited in the size of containers they can safely handle. Front-end load vehicles can drive directly up to a container and hoist the container in a manner similar to a forklift hoisting a pallet; the containers do not need to be manually rolled into position by a truck crew as with a rear-end load vehicle. Service to commercial customers that use small containers is called "small containerized hauling service."

Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags or trash cans at curbside. Rear-end load vehicles are generally used to collect waste from residential customers and from those commercial customers that generate relatively small quantities of solid waste, similar in amount and kind to those generated by residential customers. Generally, rear-end loaders use a two or three person crew to manually load the waste into the rear of the vehicle.

Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Customers, like shopping malls, use large,

roll-off containers with compactors. This type of customer generally generates compactible trash, like cardboard, in very great quantities; it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

There are no practical substitutes for small containerized hauling service. Small containerized hauling service customers will not generally switch to noncontainerized service because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-off service is much too costly and takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option.

Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for trash hauling equipment to travel long distances without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish

garages and related facilities within each major local area served. Local laws or regulations may further localize markets. For example, flow control regulations in Pennsylvania can designate the facilities where trash picked up within a geographic area must be disposed. Other local regulations may prohibit the depositing of trash from outside a particular jurisdiction in disposal facilities located within that jurisdiction. By designating certain disposal facilities, these laws and regulations can dictate which disposal facilities can compete for waste from these local jurisdictions and how a hauler can set up its routes.

The Complaint alleges that USA Waste's acquisition of Sanifill would substantially lessen competition for the provision of small containerized hauling service in the Houston and Johnstown markets. Actual and potential competition between USA Waste and Johnstown for the provision of small containerized hauling service in the Houston and Johnstown markets will be eliminated.

USA Waste and Sanifill are two of the largest providers of small containerized hauling service in the Houston and Johnstown markets. In the Houston market, USA Waste has a 24 percent share and Sanifill has a 7 percent share. The acquisition would increase the Herfindahl-Hirschmann Index (HHI) by about 325 to about 2225.

In the Johnstown market, USA Waste has a 31 percent share and Sanifill has a 14 percent share. The acquisition would increase the HHI by about 850 to about 2550.

Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been

documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price fixing, and where it has occurred, has been shown to persist for many years.

The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the alleged markets, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service.

A new entrant cannot constrain the prices of larger incumbents until it achieves minimum efficient scale and operating efficiencies comparable to the incumbent firms. In small containerized hauling service, achieving comparable operating efficiencies requires achieving route density comparable to existing firms, which typically takes a substantial period of time. A substantial barrier to entry is created by the use of long-term contracts coupled with selective pricing reductions to specific customers to deter new entrants into small containerized hauling service and to hinder them in winning enough customers to build efficient routes. Further, even if a new entrant endures and grows to a point near minimum efficient scale, the entrant will often be purchased by an incumbent firm and will be removed as a competitive threat.

B. Landfill Disposal Services

Most commercial solid waste is taken by haulers to landfills for disposal. Access to a suitable MSW landfill at a competitive price is essential to a hauling company performing commercial containerized hauling service because disposal costs account for approximately 30-50 percent of the revenues received for this service. Suitable MSW landfills are difficult and time consuming to obtain because of the scarcity of appropriate land, high capital costs, local resident opposition, and government regulation. Several years are required to process an application, with no guarantee of success.

In Texas, dry waste can be taken to what are referred to as a MSW (Type 1) landfill or to a dry waste (Type 4) landfill. Access to a suitable landfill at a competitive price is essential to a hauling company collecting dry waste because disposal costs can account for over 60% of the revenues for this service. Dry waste landfills are difficult and time consuming to obtain because to permit and build a Type 4 landfill in Texas, one must go through a process similar to that for permitting a Type 1 landfill. Several years are required to process an application, with no guarantee of success.

USA Waste's acquisition of Sanifill would substantially lessen competition for the provision of MSW landfill and dry waste landfill service in the Houston market. Actual and potential competition between USA Waste and Sanifill for the provision of MSW

and dry waste landfill service in the Houston market will be eliminated.

USA Waste and Sanifill are two leading providers of MSW landfill and dry waste landfill services in the Houston market. There are nine MSW landfills (owned by four firms) and approximately 18 dry waste landfills (owned by seven firms) in the Houston area. USA Waste and Sanifill each operate one MSW landfill; Sanifill has 11 dry waste landfills (four operating) and USA Waste has one dry waste landfill.

As a result of the acquisition, the concentration of MSW and dry waste landfill services in the Houston market will be substantially increased, which is likely to result in price increases. The acquisition would increase the HHI in MSW landfill disposal service by 225 points to 3550; and in dry waste landfills by 650 points to 4000. In the Houston market, there are no alternative types of facilities available for the disposal of either MSW waste or dry waste. Although dry waste can be taken to either a MSW landfill or a dry waste landfill, prices at the MSW landfill are significantly higher than at the dry waste landfill, so that MSW landfills are not normally used for dry waste. Accordingly, haulers are not likely to switch to another disposal service despite an increased concentration in the ownership of MSW or dry landfills and a likely price increase resulting from the merger.

C. Harm to Competition As A Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: competition for the provision of small containerized hauling service in the Houston and Johnstown markets and landfill disposal service in the Houston market will be substantially lessened; actual and potential competition between USA Waste and Sanifill in the provision of small containerized hauling service and landfill disposal service in the Houston market will be eliminated; and prices for small containerized hauling service in the Houston and Johnstown markets and landfill disposal service in the Houston market are likely to increase above competitive levels.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

A. The Houston Market

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in small containerized hauling services in the Houston market by establishing a new, independent and economically viable competitor in that market. The proposed Final Judgment requires USA Waste and Sanifill, within 90 days of August 30, 1996, to divest, as viable ongoing businesses, the Houston Hauling Assets, Houston Landfill Site and the Houston Airspace Assets. The divestitures would include the small containerized hauling service assets, landfill

disposal assets, and such other assets as may be necessary to insure the viability of the small container and landfill businesses. If USA Waste and Sanifill cannot accomplish these divestitures within the above-described period, the Final Judgment provides that, upon application (after consultation with the State of Texas) by the United States as plaintiff, the Court will appoint a trustee to effect divestiture.

The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the State of Texas) that the operations can and will be operated by the purchaser or purchasers as viable, ongoing businesses that can compete effectively in the relevant market. The defendants must take all reasonable steps necessary to accomplish the divestitures, shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that USA Waste and Sanifill will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter such orders as appropriate in order

to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

In addition, the proposed Final Judgment intends to eliminate the anticompetitive effects of the acquisition in the Houston area market for MSW disposal services by requiring USA Waste and Sanifill to sell the rights to dispose of 2 million tons of MSW waste over ten years at their only two MSW landfills in the area. The Final Judgment limits the amount disposed of in any one year to 270,000 tons and requires that USA Waste and Sanifill will provide the necessary services to dispose of the waste to the purchaser or any agents designated by the purchaser in a nondiscriminatory manner. The 270,000 ton limit is approximately 80% of the total capacity used in 1995 at the Sanifill MSW landfill. Sanifill will retain some of the hauling operations that used this landfill in 1995 and needs some capacity to compete for large disposal contracts against its two larger landfill competitors in the area. The availability of this significant capacity limits the impact of any increase in MSW landfill concentration in the Houston market. The availability of this landfill capacity further helps to ensure the success of any entity purchasing the Houston Hauling Assets in competing with other haulers in the Houston market.

Pursuant to its terms, the proposed Final Judgment mandates that USA Waste also divest its sole dry waste (Type 4) landfill in the Houston area market. USA Waste's divestiture of the North County Landfill eliminates any possible anticompetitive effect

related to the merger and its impact on dry waste landfills in the Houston area market.

Finally, the requirement of the proposed Final Judgment that defendants provide 30 days written notice of any proposed purchase of significant waste hauling or disposal companies in the Houston market insures that the U.S. Department of Justice and the State of Texas General's Office will be able to review, consider and oppose if necessary any future consolidation in the market for a period of ten years.

B. The Johnstown Market

The proposed Final Judgment also requires USA Waste and Sanifill to offer less restrictive contracts to small containerized hauling customers in the Johnstown area market. These changes to the contracts involve substantially shortening the term of contracts USA Waste and Sanifill use from three years to one year, substantially reducing the amount of liquidated damages, and eliminating other terms that could make entry more difficult. The proposed Final Judgment generally requires that these revised contracts shall be offered immediately to all new small containerized hauling customers. Within 30 days of the entry of the proposed Final Judgment, USA Waste and Sanifill must offer the revised contract to all of their non-municipal small containerized hauling service customers in the Johnstown market. These changes in the contract will make it easier for a new entrant to gain customers and set up an efficient route or for a small hauler to

expand its route if prices increase. In the Johnstown area, a rural market in which most haulers offer rearload small containerized hauling services and there are a number of small containerized haulers, contract relief should substantially eliminate any anticompetitive effects in the small containerized hauling market.

The proposed Final Judgment further limits any anticompetitive effect in the small containerized hauling market related to the USA Waste acquisition of Sanifill in the Johnstown market in several ways. First, the defendants are required to make available specified MSW landfill airspace rights to independent haulers for a ten year period. Defendants are obliged to accept up to 200 tons per day and up to 62,400 tons per year during this period at the Pellegrine landfill under non-price terms no less favorable than those provided to defendants' vehicles or the vehicles of any municipality in the Johnstown market. Second, USA Waste and Sanifill are required to refrain from opposing in any way the addition of new or existing landfills to any county landfill plan in the Johnstown market from entry of the Final Judgment and refrain from opposing any permit application for a new landfill or expansion of an existing landfill for a period of ten years. Finally, the requirement that defendants provide at least 30 days written notice of any proposed purchase of significant waste hauling or disposal companies in the Johnstown area market insures that the U.S. Department of Justice and the Commonwealth of Pennsylvania Attorney General's Office will be able to review,

consider and oppose if necessary any future consolidation in the market for a period of ten years.

The United States concluded divestiture was not necessary in the Johnstown market. It determined that a change in the type of contracts used with small containerized hauling service in this market, combined with the additional notice and landfill capacity agreements reached with the parties, will adequately address the competitive concerns posed by USA Waste's acquisition of Sanifill. A number of factors led to that decision, including the number of existing competitors in the market; the size of the population; the number, location and density of commercial establishments requiring small containerized hauling service; and the extensive use of rear-end load mixed (hand and containerized) collection routes. Absent the long-term contracts and limitations on landfill access, these firms could be expected to expand significantly their containerized hauling operations in response to an anticompetitive price increase. Requiring USA Waste and Sanifill to offer less restrictive contracts within the market and to provide access to landfill capacity to independent haulers eliminates a major barrier to entry and expansion, thus constraining any possible anticompetitive price increase by the post-acquisition firm.

The relief sought in the various markets alleged in the Complaint has been tailored to insure that, given the specific conditions in each market, the relief will protect consumers of small containerized hauling services and landfill disposal services

from higher prices and poorer quality service in those markets that might otherwise result from the acquisition.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendant.

V.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any

person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to:

J. Robert Kramer II
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 3000
Washington, D.C. 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, litigation against defendants USA Waste and Sanifill. The United States could have brought suit and sought preliminary and permanent injunctions against USA Waste's acquisition of the voting stock of Sanifill. The United States is satisfied, however, that the divestiture of the described assets,

the provision of significant landfill capacity to competitors, and the contract relief outlined in the proposed Final Judgment will encourage viable waste hauling and disposal competitors in the markets identified by the United States as requiring the relief implemented. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in those markets. The divestiture, the provision of landfill capacity and the proposed contractual relief will restore the markets to the structure that existed prior to the acquisition, will preserve the existence of independent competitors in those areas, and will allow for new entry and expansion by existing firms in those markets where contract relief is sought. For the reasons discussed above, *infra* at pages 17-18, the United States concluded divestiture was not necessary in the Johnstown market because the contractual, notification, and landfill capacity agreements reached with the parties adequately address the competitive concerns.

VII.

STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider--

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any

other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."^{1/} Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to

¹ 119 Cong. Rec. 24598 (1973). See, United States v. Gillette Co., 406 F.Supp. 713, 715 (D.Mass.1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See, H.R. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988) quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also, Microsoft, 56 F.3d 1448 (D.C. Cir.1995). Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.^{2/}

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and

United States v. Bechtel, 648 F.2d at 666 (citations omitted)(emphasis added); see United States v. BNS, Inc., 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); United States v. Gillette Co., 406 F. Supp. at 716. See also United States v. American Cyanamid Co., 719 F.2d at 565.

less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."^{3/}

VIII.

DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

³ United States v. American Tel. and Tel Co., 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) quoting United States v. Gillette Co., supra, 406 F. Supp. at 716; United States v. Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky 1985).

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Dated: September 6, 1996

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing has been served upon USA Waste Services, Inc, Sanifill, Inc., the Office of the Attorney General of the State of Texas, and the Office of the Attorney General of the Commonwealth of Pennsylvania, by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the addresses given below, this 6th day of September, 1996.

USA Waste Services, Inc.:
c/o James R. Weiss
Preston, Gates
Suite 500
1735 New York Ave., NW
Washington, DC 20006

Sanifill, Inc.:
c/o Kirk K. Van Tine
Baker & Botts, LLP
1299 Pennsylvania Ave., NW
Washington, DC 20004

State of Pennsylvania:
James A. Donahue, III
Senior Deputy Attorney General
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